

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1965-1966 OF 2014

Shashi Prakash Khemka (Dead)
Through LRs. and Another

Appellant(s)

Versus

NEPC Micon (Now called NEPC India
Ltd.) and Others

Respondent(s)

O R D E R

Heard Mr. Nikhil Nayyar, learned counsel for the appellants. The respondents have been served, but from the inception of the special leave petition in the year 2007, none has been appearing for the respondents.

The subject matter of dispute before us is the exercise of power under Section 111-A of the Companies Act, 1956 (as amended in 1988) and the Depositories Related Laws (Amendment) Act, 1997. In terms of the impugned order of the Madras High Court, on an appeal filed against the order of the Company Law Board, the view taken by the Company Law Board has been reversed and thus, in effect, the appellants have been left to a remedy of civil suit.

Learned counsel for the appellants says that the issue raised by the appellants qua the transfer of shares, whether done rightly or wrongly, has to be adjudicated by some forum - whether it be a civil suit or the exercise of jurisdiction by the then Company Law Board.

Learned counsel for the appellants has drawn our attention to the view expressed in Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. and Others (1998) 7 SCC 105, to canvass the proposition that while examining the scope of Section 155 (the predecessor to Section 111), a view was taken that the power was fairly wide, but in case of a serious dispute as to title, the matter could be relegated to a civil suit. The submission of the learned counsel is that the subsequent legal developments to the impugned order have a direct effect on the present case as the Companies Act, 2013 has been amended which provides for the power of rectification of the Register under Section 59 of the said Act. Learned counsel has also drawn our attention to Section 430 of the Act, which reads as under:-

"430. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate."

The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.

It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and

the power would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded.

We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today.

The appeals are allowed to the aforesaid extent. There shall be no order as to costs.

.....J.
[L. Nageswara Rao]

.....J.
[Sanjay Kishan Kaul]

New Delhi
January 08, 2019.

ITEM NO.111

COURT NO.12

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.1965-1966/2014

SHASHI PRAKASH KHEMKA (D) BY LRS. & ANR.

Appellant(s)

VERSUS

NEPC MICON (NOW CALLED NEPC INDIA LTD.)
AND ORS.

Respondent(s)

Date : 08-01-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Appellant(s)

Mr. Nikhil Nayyar, AOR
Mr. N. Sai Vinod, Adv.
Mr. Dhananjay Baijal, Adv.
Mr. Divyanshu Rai, Adv.
Mr. Naveen Hegde, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed
order.

(Chetan Kumar)
A.R.-cum-P.S.

(Anand Prakash)
Court Master

(Signed order is placed on the file)